

ROBERT KEOUGH

IBLA 80-951

Decided May 5, 1981

Appeal from decision of Montana State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. M MC 45975.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: David W. DePuy, Esq., Livingston, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert Keough has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated August 12, 1980, declaring the Souvenir placer mining claim, M MC 45975, abandoned and void for failure to file timely evidence of annual assessment work pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 43 CFR 3833.4.

Appellant's mining claim was located on July 1, 1941, and recorded with BLM on October 16, 1979. On May 6, 1980, BLM received an "Affidavit of Annual Representation of Mining Claim" with respect to the subject claim, indicating assessment work performed during the 1979 assessment year.

In his statement of reasons for appeal, appellant points out that "[a]ll assessment work has been done and filed with the Clerk and Recorder of Park County, Montana, through the assessment year of 1979." He argues that his claim cannot be declared void "without giving written notice" of the filing requirement, pursuant to the provisions of the U.S. Constitution. Appellant contends that no notice was given. He asserts that information given to newspapers by BLM indicating that recordation of mining claims was necessary "tended to confuse the claim holders" because it did not specify that evidence of annual assessment work had to be filed. He also argues that he has made a good faith effort to comply with the filing requirement.

[1] The applicable regulation, 43 CFR 3833.2-1(a), provides that:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

See 43 U.S.C. § 1744(a) (1976).

Pursuant to this regulation, appellant was required to file "on or before October 22, 1979," as this date was "sooner" than December 30, 1980, i.e., "December 30 of [the] calendar year following the calendar year of recording," 43 CFR 3833.2-1(a). 43 CFR 3833.4 provides the penalty for failure to satisfy the filing requirement of 43 CFR 3833.2-1(a): "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void." See 43 U.S.C. § 1744(c) (1976).

Appellant's evidence of annual assessment work was filed well after the final date prescribed for filing. Accordingly, BLM properly declared the claim abandoned and void.

[2] Appellant's filing with the County Recorder for the 1979 assessment year does not satisfy the filing requirement, where 43 CFR 3833.2-1(a) specifies "the proper BLM office" as the place for filing. Joseph Ojurovich, 54 IBLA 100 (1981); Johannes Soyland, 52 IBLA 233 (1981). Furthermore, BLM was not required to notify mining claimants of their obligations under FLPMA, supra. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980). Reliance by appellant on the newspaper article concerning recordation cannot relieve him of the obligation of complying with the requirement for filing assessment work.

Despite appellant's asserted good faith efforts to comply, in enacting the filing requirements of FLPMA, supra, Congress did not invest the Secretary of the Interior with authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

